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8      *David Bryan and Parker Miller*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

12 JAMES VINCENT BANKS,  
13 Plaintiff,  
14 vs.  
15 JOSEPH LOMBARDO, et al  
16 Defendants.

Case No. 2:20-cv-00556-MMD-NJK

**STIPULATION TO EXTEND  
DISCOVERY DEADLINES  
(Fifth Request)  
[ECF No. 72]**

IT IS HEREBY STIPULATED AND AGREED between Defendants Daniel Holm, Russell Thompson, Ryan Heiss, Michael Riesepow, David Bryan and Parker Miller (collectively “LVMPD Defendants”<sup>1</sup>), by and through their counsel, Kaempfer Crowell, and Plaintiff James V. Banks, appearing pro se, that discovery be continued for a period of sixty (60) days up to and including a discovery cutoff date of **September 23, 2022**.

<sup>24</sup> <sup>1</sup> Prior to June 29, 2022 the LVMPD Defendants referred to Holm, Thompson, Heiss and Riesepow. Beginning June 29, 2022, the LVMPD Defendants also include David Bryan and Miller.

1           The requested extension is necessary because of a few remaining unresolved discovery  
 2 and dispositive issues in this case, and the anticipated service on and appearance of Defendant  
 3 Dr. Williamson. LVMPD Defendants Daniel Holm, Russell Thompson, Ryan Heiss, and  
 4 Michael Riesepow served Requests for Production of Documents. The LVMPD Defendants  
 5 filed a Motion to Compel (ECF No. 62), which was partly granted by this Court in Order ECF  
 6 No. 73, and allowed Plaintiff until July 7, 2022 to serve his Responses. Next, LVMPD  
 7 Defendants' Motion for Judgment on the Pleadings, (ECF No. 42), is pending before the Court,  
 8 and Plaintiff has not filed a response (though he has received multiple extensions of time to do  
 9 so)<sup>2</sup>. A ruling on that Motion would narrow at-issue claims in this case. The delays in this case  
 10 have prevented LVMPD Defendants from requesting and reviewing all medical records relevant  
 11 to Plaintiff's claims as well as prevented LVMPD Defendants from fairly deposing Plaintiff  
 12 earlier on and obtaining an expert's comprehensive report. Furthermore, Plaintiff's deposition  
 13 took place July 1, 2022. Plaintiff will be allowed 30 days to read the deposition transcript and  
 14 submit the corrections/errata sheet to correct any errors in the transcript. For these reasons, the  
 15 parties respectfully request an extension of current discovery deadlines by 60 days.

16 **I. BACKGROUND**

17 **A. Procedural History**

18           The Court issued a Scheduling Order on July 12, 2021, giving the parties ninety days to  
 19 conduct discovery, (ECF No. 17). On October 5, 2021, the Court granted LVMPD Defendants'  
 20 Motion to Extend Discovery (First Request) through an Order, (ECF No. 36). On November 22,  
 21 2021, LVMPD Defendants and Plaintiff filed a Stipulation to Extend Expert Disclosure  
 22 Deadlines (First Request), (ECF No. 37). The Court granted this Stipulation to Extend Expert

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23           <sup>2</sup> Plaintiff's last request for an extension was filed April 27, 2022, which requested until May 3, 2022 to  
 24 file his Opposition, however Plaintiff did not file an Opposition and has made no further extension  
 requests.

1 Disclosure Deadlines on November 23, 2021, (ECF No. 38). A second Stipulation to Extend  
 2 Discovery was filed on December 6, 2021, (ECF No. 39), and, on December 7, 2021, the Court  
 3 granted the stipulation, (ECF No. 40). On February 22, 2022, LVMPD Defendants filed a  
 4 Motion to Extend Discovery (Third Request), (ECF No. 47), which the Court granted on  
 5 February 24, 2022. (Order, ECF No. 48).<sup>3</sup>

6 On May 19, 2022, the Plaintiff and LVMPD Defendants filed a Stipulation to Extend  
 7 Discovery (Fourth Request), (ECF No. 71), which the Court granted on May 20, 2022. (Order,  
 8 ECF No. 72), creating the following deadlines that now govern:

9	Amend Pleadings/Add Parties:	Closed
10	Initial Experts:	Closed
11	Rebuttal Experts:	Closed
12	Discovery Cutoff:	July 25, 2022
13	Discovery Motions:	August 8, 2022
14	Dispositive Motions Deadline:	August 24, 2022
15	Joint Pretrial Order Deadline:	September 23, 2022

16       **B.     Discovery Completed to Date**

17       LVMPD Defendants Daniel Holm, Russell Thompson, Ryan Heiss, Michael Riesepow  
 18 have voluntarily made three Rule 26 Disclosures (consisting of 1,565 pages of records).  
 19 LVMPD Defendants mailed their First Set of Interrogatories, Requests for Production of  
 20 Documents, and Requests for Admissions to Plaintiff on September 9, 2021. Plaintiff provided  
 21 responses to the Requests for Admissions and Interrogatories, on or about December 17, 2021.  
 22 LVMPD Defendants disclosed their expert, Dr. Mark E. McKenzie. Dr. McKenzie provided a

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23       <sup>3</sup> The parties acknowledge that this Order stated “While the Court finds good cause to allow an  
 24 extension, it provides that extension with the admonition that it is not inclined to grant any further  
 extensions.” (ECF 48 at 1:14-18).

1 preliminary report, though the report recognized significant limitations due to outstanding  
 2 discovery requests and a need for more comprehensive medical records than that already  
 3 exchanged between the parties. LVMPD Defendants have sent more than a dozen subpoenas out  
 4 for service to obtain Plaintiff's medical records from various jails and prisons. The LVMPD  
 5 Defendants served a second set of Interrogatories and Requests for Admissions on Plaintiff on  
 6 June 23, 2022.<sup>4</sup> Plaintiff's deposition occurred July 1, 2022.

### 7           **C. Discovery that Remains to be Completed**

8           Plaintiff still needs to respond to LVMPD Defendants' Requests for Production of  
 9 Documents—including completing an Authorization to Disclose Information regarding medical  
 10 records. The LVMPD Defendants filed a Motion to Compel (ECF No. 62), which was partly  
 11 granted by this Court in Order ECF No. 73, and gives Plaintiff until July 7, 2022 to serve his  
 12 Responses.<sup>5</sup>

13           Because Plaintiff has not provided Authorizations regarding release of his medical  
 14 records, LVMPD Defendants served subpoenas on multiple entities and anticipate serving  
 15 several more. LVMPD Defendants will then need to disclose the records received pursuant to  
 16 these subpoenas. The newly appearing LVMPD Defendants, Miller and Bryan, will be joining  
 17 the remaining LVMPD Defendants in filing another Rule 26 Disclosure.

18           During the subpoenaing process, LVMPD Defendants were advised by the U.S.  
 19 Attorney's Office that it cannot release Plaintiff's medical records from the federal prisons  
 20 unless they receive either Plaintiff's Authorization or a Court Order to do so. LVMPD  
 21 Defendants are awaiting Plaintiff's Responses to their Requests for Production of Documents, as

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22           <sup>4</sup> LVMPD Defendants agreed to Plaintiff's request that the due date for his responses to the pending Second Set of  
 23 Interrogatories and Requests for Admissions be extended from July 28, 2022, to August 12, 2022.

24           <sup>5</sup> LVMPD Defendants agreed to Plaintiff's request that the due date for his responses to the Request for Production of  
 25 Documents be extended from July 7, 2022, to July 15, 2022.

1 Ordered by this Court, to determine if he will be providing a signed Authorization to Disclose  
 2 Information regarding medical records, or if the LVMPD Defendants will need to file another  
 3 Motion to Compel, or in the alternative an Order from the Court to disclose plaintiff's medical  
 4 records from the federal prisons.

## 5 **II. GROUNDS FOR AN EXTENSION**

6 Local Rule 26-3 governs this Stipulation requesting an extension of expert disclosure  
 7 deadlines. This Local Rule imposes a good cause standard to earn the extension:

8 A motion or stipulation to extend a deadline set forth in a discovery plan  
 9 must be received by the court no later than 21 days before the expiration  
 10 of the subject deadline. A request made within 21 days of the subject  
 11 deadline must be supported by a showing of good cause. A request made  
 after the expiration of the subject deadline will not be granted unless the  
 movant also demonstrates that the failure to act was the result of excusable  
neglect.

12 Here, good cause supports extending the discovery cutoff deadline, dispositive motions deadline,  
 13 and pretrial order deadline.

### 14 **1) *Reasons for the Extension***

15 Discovery in this case has progressed much slower than anticipated because of Plaintiff's  
 16 detention conditions, still outstanding responses owed by Plaintiff to LVMPD Defendants'  
 17 written discovery requests, and Plaintiff's deferrals on completing an Authorization to Disclose  
 18 Information about medical records.

19 Because of the slow pace of discovery, LVMPD Defendants will not have enough time  
 20 under the current deadlines to obtain relevant documents from Plaintiff's medical providers at his  
 21 prior federal detention facilities, have LVMPD Defendants' retained expert review such records  
 22 and provide a supplemental report, and disclose such records to Plaintiff.

23 In addition, Plaintiff recently received permission from the Court to extend the time he  
 24 has to serve Defendant Dr. Williamson, until August 1, 2022, which is after the current discovery

1 cut off deadline. Finally, Plaintiff's deposition took place July 1, 2022. Plaintiff will be allowed  
2 30 days to read the deposition transcript and submit the corrections/errata sheet to correct any  
3 errors in the transcript. For these reasons, the parties respectfully request an extension of current  
4 discovery deadlines by 60 days.

5           **2)     *Good Faith Efforts Supporting the Requested Extension***

6           During discovery, LVMPD Defendants have been diligent. LVMPD Defendants have  
7 produced over a thousand pages of records in their initial Rule 26 Disclosures, timely completed  
8 written discovery requests to Plaintiff in the form of Interrogatories, Requests for Production of  
9 Documents, and Requests for Admissions, then granted Plaintiff multiple extensions to of time to  
10 provide answers.

11          Aside from exchanging relevant documents, LVMPD Defendants actively pursued  
12 outside help through a medical expert. Dr. Mark E. McKenzie, M.D. agreed to assist with the  
13 case and provided an initial report that LVMPD Defendants disclosed by the deadline of January  
14 20, 2022. Dr. McKenzie's report notes, however, a need for more comprehensive medical  
15 records from Plaintiff's prior treating physicians and other detention facilities.

16           **3)     *Length of Delay and Potential Impact on the Proceedings***

17          A trial date has not been set in this case. Accordingly, granting the Stipulation will not  
18 create unnecessary delay in resolving this case on its merits.

19           **4)     *No Prejudice Would Arise***

20          No party will be prejudiced if the requested extension occurs. LVMPD Defendants are  
21 waiting for Plaintiff's responses to written discovery and a Motion for Judgment on the  
22 Pleadings, and the parties are still investigation the factual issues in this case.

23           **III. PROPOSED EXTENDED DEADLINES**

24          The parties respectfully request that this Court enter an Order as follows:

Deadline	Current Date	Proposed New Date
Deadline to Amend/Add Parties	closed	same
Initial Deadline to Disclose Experts	closed	same
Deadline to Disclose Rebuttal Experts	closed	same
Discovery Cutoff	Mon., July 25, 2022	Fri. Sept. 23, 2022
Discovery Motions Deadline	Mon., Aug. 8, 2022	Fri., Oct. 7, 2022
Dispositive Motions Deadline	Weds., Aug. 24, 2022	Mon., Oct. 24, 2022
Pretrial Memorandum Deadline	Fri., Sept. 23, 2022	Weds., Nov. 23, 2022

#### **D. Motions in Limine/*Daubert* Motions.**

Under LR 16-3(b), any motions in limine, including *Daubert* motions, shall be filed and served 30 days prior to the commencement of Trial. Oppositions shall be filed and served and the motion submitted for decision 14 days thereafter. Reply briefs will be allowed only with leave of the Court.

#### **E. Extensions or Modification of the Discovery Plan and Scheduling Order.**

In accordance with LR 26-3, applications to extend any date set by the discovery plan, scheduling order, or other order must, in addition to satisfying the requirements of LR 26-1, be supported by a showing of good cause for the extension. All motions or stipulations to extend a deadline set forth in a discovery plan shall be received by the Court not later than 21 days before the expiration of the subject deadline. A request made after the expiration of the subject deadline shall not be granted unless the movant demonstrates that the failure to set was the result of excusable neglect. Any motion or stipulation to extend a deadline or to reopen discovery shall include:

- (a) A statement specifying the discovery completed;

- 1                   (b) A specific description of the discovery that remains to be completed;  
2                   (c) The reasons why the deadline was not satisfied or the remaining discovery was  
3 not completed within the time limits set by the discovery plan; and  
4                   (d) A proposed schedule for completing all discovery.

5                  This request for an extension is made in good faith and joined by all the parties in this  
6 case. The Request is timely pursuant to LR 26-3. Trial is not yet set in this matter and  
7 dispositive motions have not yet been filed. Accordingly, this extension will not delay this case.  
8 Moreover, since this request is a joint request, neither party will be prejudiced. The extension  
9 will allow the parties the necessary time to complete discovery.

10 DATED this 18th day of July, 2022.

DATED this 1<sup>st</sup> day of July, 2022.

11 KAEMPFER CROWELL

PLAINTIFF JAMES BANKS

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17 *Plaintiff, Pro Se*

18 IT IS SO ORDERED.

19  
20 Dated July 19, 2022

21  
22  
23   
24 UNITED STATES MAGISTRATE JUDGE